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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/155,921	05/13/1999	GUNTER DONN	514413-3669	9327

7590 04/08/2003

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EXAMINER

FOX, DAVID T

ART UNIT PAPER NUMBER

1638

DATE MAILED: 04/08/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.



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Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☐ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run _____ or continues to run _____ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 3/20/03 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☒ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☒ They raise the issue of new matter. (See Note).
- d. ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

b. + c. : Basis in spec, via incorp. by ref. pub., is unclear. No "N:5125" vector (p. 5 of AF amend) is found in Fig. 5 of Wassmann et al. d. : 112 first para and art rejections remain.

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: _____

Claims objected to: _____

Claims rejected: 9 + 11-16

However;

☒ Applicant's response would have overcome the following rejection(s): 112 2nd of record

4. ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because Applicant's assertions that other ammonium-specific asparagine synthetase genes may be isolated or synthesized do not rebut Examr evidence of
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐, has ☐ has not been approved by the examiner.

☐ Other unpredictability. Re 103, evidence of unexpected results particular gene source plant recipient + phenotype of enlarged tuber) is commensurate with scope of claims. In re Lindner 173 USPQ 356 and re Grasselli, 218 USPQ 769. Transgenes present in "Arl" and "As 2" plants on p. 20 of spec are unclear. Other phenotypes anecdotal.